APPENDIX A

FILED IN THE SUPREME COURT OF THE STATE OF COLORADO

August 10, 1959

George W. Trout, Clerk

No. 19131

THE PEOPLE OF THE STATE OF COLORADO,
Relator,

v.

H. GORDON HOWARD, *Respondent.*

Original Proceeding

En Banc

Respondent's License to Practice Law Suspended

Mr. Duke W. Dunbar, Attorney General,

Mr. Frank E. Hickey, Deputy Attorney General,
Attorneys for Relator.

Messrs. Rogers, McClain and Brown,
Attorneys for Respondent.

Mr. Justice Hall delivered the opinion of the Court.

This is an original proceeding initiated by the Attorney General of the state of Colorado who, on July 9, 1959, filed with the clerk of this court a petition for a citation directed to H. Gordon Howard, an attorney licensed by this court to practice law in the state of Colorado, to show cause why his license should not be suspended during the pendency of disciplinary proceedings pending before the Grievance Committee of this court, and awaiting investigation hearing and recommendations of that committee with respect to the charges filed against said Respondent.

Pursuant to said petition, citation was issued on July 13, 1959, directing the Respondent to appear before this

court at 9:30 A. M., July 27, 1959, to show cause why his license should not be suspended. The citation, together with a copy of the complaint, pending before the said Grievance Committee, was served on the Respondent on July 14, 1959. Thereafter and on July 21, 1959, Respondent filed a motion for a continuance and extension of time for appearance herein, and was granted further time and until August 3, 1959, to make his appearance and return.

On July 30, 1959, the Respondent, through his counsel, filed a motion for further continuance and for additional time to make return to said citation, which motion was on July 30, 1959, denied.

On July 31, 1959, the Respondent, through his counsel, filed his motion to dismiss the formal complaint then pending before the Grievance Committee, and thereafter and on August 3, 1959, prior to the hour of hearing herein filed a motion to strike certain allegations from the complaint pending against him.

At 9:30 A. M., August 3, 1959, the Respondent and his counsel appeared before this court and his counsel again urged and requested that a continuance be granted, which request for a further continuance was denied. Counsel was given an opportunity to argue the merits of his motions to dismiss and to strike and ruling thereon was deferred.

The Respondent, of his own volition and without being required so to do, was sworn as a witness and given full opportunity to answer any matters set forth in the charges filed against him. He testified with reference to each of the four charges and was given full opportunity to present any evidence that he might offer in his defense. At the close of the hearing the court took the matter under advisement.

The court now being fully advised in the premises denies the motion to strike and the motion to dismiss and, hav-

ing reviewed the charges, considered the testimony of Respondent, and taken judicial notice of its own records; particularly the records in Case No. 18456, *H. Gordon Howard, et al.*, v. *Joseph D. Hester, as Conservator, et al.*, a civil proceeding (brought to this court by Respondent by writ of error), decided April 13, 1959, wherein it was found and determined that respondent had obtained from Mary E. Hainmin, age eighty-five years, by fraud and undue influence, the sum of $1000.00 and her promissory note for $250.00; and Case No. 18346, *Howard* v. *International Trust Company, et al.*, a civil proceeding (brought to this court by Respondent by writ of error), decided April 27, 1959, wherein it was found and determined that Respondent by fraud obtained from Mary Steinhart, age eighty-eight years, a deed to certain real estate located in Illinois, now Texas that the records in the cases above referred to disclose facts which warrant and sanction the suspension of the Respondent's license to practice law pending final hearing and determination of the charges set forth in the complaint.

It is therefore ordered that the Respondent's license to practice as an attorney and counsellor at law in the state of Colorado is hereby suspended until the further order of this court; it is further ordered that the Respondent forthwith and from this date hence cease and desist from holding himself out as an attorney authorized to practice law in the state of Colorado, and that he cease and desist from the practice of law in any manner, directly or indirectly.

Mr. Justice Frantz not participating.

APPENDIX B

FILED IN THE SUPREME COURT OF THE STATE OF COLORADO

August 21, 1961

George W. Trout, Clerk

No. 19131

THE PEOPLE OF THE STATE OF COLORADO,

v.

H. GORDON HOWARD,

Attorney Respondent.

Original Proceeding in Discipline

En Banc

Respondent Disbarred

Mr. Duke W. Dunbar, Attorney General,

Mr. Frank E. Hickey, Deputy Attorney General,

Mr. Richard A. Zarlango, Assistant Attorney General,

Attorneys for the People of the State of Colorado.

Respondent H. Gordon Howard, pro se.

Mr. Justice Sutton delivered the opinion of the Court.

Respondent H. Gordon Howard was licensed to practice law in Colorado on September 26, 1938. On July 9, 1959, the Attorney General filed a formal complaint against Howard alleging facts which if proved would justify his disbarment. On August 3, 1959, a hearing was held before this court on a citation directed to respondent to show cause why his license to practice law should not be suspended pending determination of the complaint. As a result of that hearing he was suspended from the practice of law until further order of the Court. In *Re Howard*, 140 Colo. 151, 342 P.(2d) 635. The suspension has not been lifted and the matter is now before the court for final determination upon the report and recommendation for disbarment of the Grievance Committee of the Court.

Two charges, of the original four filed, were considered by the Committee and now by the Court as a basis for this disciplinary proceeding. They are:

1. The alleged obtaing of a warranty deed to real estate in La Salle County, Illinois, from one Mary Steinhart, a then aged, partially blind woman, by means of fraud and deceit without consideration. We note that Mrs. Steinhart was deceased by the time the complaint was filed; and

2. The alleged obtaining of $1,000.00 in cash and a $250.00 a cognovit note payable to respondent's wife from Mary E. Hannum, an aged woman, by imposition, fraud and deceit and without compensation. We note that Mrs. Hannum was adjudicated mentally incompetent about the time the complaint was filed against respondent.

Suffice it to say here that the charges in question were sufficiently established, over respondent's denials, his own testimony and that of his witnesses as well as by the records in two civil actions against respondent in this Court, *Howard* v. *International Trust Company*, 139 Colo. 314, 338 P.(2d) 689, and *Howard* v. *Hester*, 139 Colo. 255, 338 P. (2d) 106.

Respondent particularly objects to the consideration of the records in the civil cases referred to, contending for application of the general rule that such records are not admissible because of lack of privity of the parties. He ignores the exception to this rule which is to the contrary in the case of disciplinary proceedings against an attorney. *See Werner* v. *State Bar*, 24 Calif. (2d) 611, 150 P.(2d) 892; *Louisiana State Bar Association* v. *Sachett*, 231 La. 655, 92 So. (2d) 571; *Armitage* v. *Bar Rules Committee*, 223 Ark. 465, 266 S.W. (2d) 818; *Re Thatcher* v. *United States* (C.C.A. 6th Circuit 1914) 212 Fed. 801.

Put another way, in objecting to the admission in evidence of these records, respondent fails to recognize the distinction between disciplinary and usual civil or crimi-

nal proceedings. In *In Re Lacy*, 239 Mo. App. 71, 112 S.W. (2d) 594, the Missouri court drew this distinction saying:

> "In his brief and argument, the respondent has proceeded on the theory that this is an adversary proceeding. We do not so understand it. It is an investigation by the court into the conduct of one of its officers and is neither a civil action nor a criminal proceeding, but a proceeding sui generis, the object of which is not to punish the offender, but to protect the court."

Rule 254, R.C.P. Colo. provides:

> "To warrant a finding of misconduct, the charges must be established by substantial, clear, convincing and satisfactory evidence."

However, this does not mean that strict rules of evidence apply in disbarment proceedings, although they are frequently invoked to insure a fair hearing (*Werner supra*).

In *State* v. *Gudmundsen*, 145 Neb. 324, 16 N.W. (2d) 474, the court said:

> "It is therefore the holding of this court that the finding in a civil action that an attorney at law has been guilty of conduct justifying disbarment is not conclusive on the same question when presented for determination in an action for disbarment; that notwithstanding the finding in the civil action the culpability of the attorney must be established in the disbarment action by a clear preponderance of the evidence. For this purpose the evidence taken at the trial of the civil action and all other competent evidence is admissible."

In the present case the records and transcripts in the civil actions referred to were taken by the Committee as establishing prima facie grounds for disbarment of respondent, and he was given every opportunity to present any competent evidence he had to rebut, overcome or impeach the contents of those records.

Respondent availed himself of this right consuming over two days in the presentation of his defense. And, he was also personally present at the trial of both civil actions and had full opportunity to cross-examine and did cross-examine all witnesses either personally or through counsel.

In Re Durant, supra, at page 500 of the Atlantic report the court said:

> "An attorney at law is an officer of court, exercising a privilege or franchise to the enjoyment of which he has been admitted not as a matter of right, but upon proof of fitness, brought evidence of his possession of satisfactory legal attainments and fair private character. * * * For the manner in which this privilege of franchise is exercised he is continually accountable to the court; and it may at any time be declared forfeited for such misconduct, whether professional or non professional, as shows him to be an unfit or unsafe person to manage the business of others in the capacity of an attorney. * * * The power to declare this forfeiture is a summary one inherent in the courts, and exists, not to mete out punishment to an offender, but that the administration of justice may be safeguarded and the courts and the public protected from the misconduct or unfitness of those who are licensed to perform the important functions of the legal profession."

The findings and conclusions of the Grievance Committee were that the respondent had used his position as attorney to defraud Mary E. Hannum and had used his position as agent to defraud Mary Steinhart and that his misconduct had been clearly established by the records in the civil actions referred to; that the acts committed by the respondent were and are contrary to acceptable standards of honesty, integrity and morality; and demonstrated his unfitness to continue in the practice of law. In consequence the Committee recommended that respondent be disbarred.

An examination of the record and briefs in this action confirms the correctness of our prior action in suspending respondent and leads to the inevitable conclusion that he should be disbarred.

The respondent is disbarred and his name ordered stricken from the roll of attorneys of this Court.

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF COLORADO

No. 19131

H. GORDON HOWARD, *Respondent, Appellant,*

v.

THE PEOPLE OF THE STATE OF COLORADO, *Relator, Appellee*

Original Proceeding in Discipline

The Court having considered the motion of respondent for rehearing in said cause, and being sufficiently advised in the premises, it is this day ordered that said motion be, and the same hereby is, denied.

By the Court. En Banc. September 5, 1961.

APPENDIX D

Filed July 9, 1959
George W. Trout, Clerk

Formal Complaint of the Attorney General of the State of Colorado Against H. Gordon Howard

To the Grievance Committee of the
Supreme Court of the State of
Colorado

It is alleged by the complaint in his official capacity as Attorney General of the State of Colorado as follows:

1. That H. Gordon Howard under the name of Herman Gordon Howard heretofore and on or about the 26th day

of September, 1938 took the oath as prescribed by law, subscribed the rolls of the Supreme Court and was duly admitted and licensed by the Supreme Court of the State of Colorado to practice law within said State of Colorado.

2. That during the last twenty years several complaints have been made to the GrieVance Committee of the Denver Bar Association and the Colorado Bar Association relative to the conduct of H. Gordon Howard, and on one occasion he was privately reprimanded by the Supreme Court.

3. That it appears from the record in case No. 18456 in the Supreme Court of Colorado, entitled H. Gordon Howard, et al., Plaintiffs in Error, v. Joseph D. Hester, as Conservator of the Estate of Mary E. Hannum, also known as May Hannum and Mae Hannum, a Mental Incompetent, Defendant in Error, that said Howard while acting as agent for and later as attorney for one Mary E. Hannum, an aged woman and mental incompetent, between on or about February 11, 1957 and on or about March 11, 1957, by imposition, fraud and deceit obtained from said Mary E. Hannum the sum of $1,000.00 in cash and a cognovit note payable to said Howard's wife in the sum of $250.00, without any consideration whatsoever and to which said Howard or his wife were not entitled.

4. That it appears from the record in Case No. 18340 in the Supreme Court of Colorado, entitled H. Gordon Howard, Plaintiff in Error, vs. The International Trust Co., Special Administrator of the Estate of Mary Steinhart, deceased, Defendant in Error, that said Howard, while acting as agent for Mary Steinhart, a partially blind woman of the age of 88 years, some time during the months of April and May, 1956, by fraud and deceit induced said Mary Steinhart to execute a Warranty Deed by means of which real estate in the County of La Salle, Illinois, was purportedly conveyed by her to said Howard and to execute a receipt for the sum of $6,000.00 in payment for said

real estate, when in truth and in fact said Mary Steinhart had no intention of conveying said real estate to said Howard and did not receive said $6,000.00 or any consideration therefor.

5. That it appears from the record in Civil Action No. S-4345 in the Superior Court in and for the City and County of Denver, Colorado, entitled Mary Anna Brockelman, Plaintiff, vs. H. Gordon Howard, Defendant, that said Howard as a witness in said case in his own behalf gave testimony which was false and untrue for the purpose of deceiving and misleading the Court and jury.

6. That on or about June 13, 1955 one Peter Razatos, of 809 East Colfax Avenue, Denver, Colorado, made complaint to the Denver Bar Association that said Howard, acting as attorney for Mrs. Clara Ragland, brought suit in her behalf against said Peter Razatos and others for fraud and deceit in the complaint in which said Howard made allegations which the said Howard then and there knew to be false and untrue.

Wherefore, it is respectfully requested that the Committee proceed in accordance with the rules of the Supreme Court of the State of Colorado in such cases made and provided.

DUKE W. DUNBAR
Duke W. Dunbar,
Attorney General of the State of Colorado

July 8, 1959.